IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:	)	
	)	DIVISION ONE
PATRICIA J. PAPPAS,	)	
	)	No. 63414-3-I
Respondent,	)	
	)	
and	)	
	)	
CHRISTOPHER S. PAPPAS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 19, 2010
	)	

Dwyer, C.J. — Christopher Pappas appeals the calculation of child support, the award of maintenance, the division of property and debt, and the award of attorney fees to Patricia Pappas in the dissolution of their marriage. Because the court adequately considered the parties' relative financial circumstances and appropriate statutory factors, Christopher[1] does not demonstrate that the trial court abused its broad discretion in the disposition of the property, allocation of debts, or award of maintenance, although a scrivener's error in the decree awarding maintenance through February 2018 rather than February 2017 must be corrected on remand. The trial court

[1] For ease of reference, we refer to the parties by their first names.

did not explain why it did not impute income to Patricia in the computation of child support, and the findings are incomplete regarding other aspects of the computation of child support. There are no findings setting out the factual basis for the award and amount of attorney fees awarded to Patricia.

Therefore, we affirm in part but remand to the trial court for the entry of factual findings regarding its calculation of child support and its award of attorney fees, and for the entry of orders consistent with these findings, and to correct the date on which the maintenance obligation terminates. We decline to award attorney fees on appeal.

FACTS

Patricia and Christopher met during college and married in 1986, when Patricia was 20 and Christopher was 23. They have three children. The oldest recently graduated from college, their son attends college, and their youngest daughter is in high school. They permanently separated in 2007.

Neither Patricia nor Christopher obtained a college degree. After the birth of their first child, Patricia never worked again outside the home. Christopher worked in retail automobile sales for most of his career. From 1986 to 1993, his annual earnings rose from just under $35,000 to $135,000. From 1994 to 1997, he earned $230,000 to $256,000. Then his earnings rose dramatically from $451,000 in 1998 to $752,000 in 2002 and down to $566,000 in 2004. In 2005, his income dropped to $221,000. In August 2006, his employment was terminated. For 2006, he earned $383,500, including $120,000 from a onetime stock option. He was unemployed for six months

and a noncompetition agreement precluded him from working in auto sales until 2008. In 2007, he earned $260,000. His 2008 W-2 forms revealed earnings of $137,000.

At the time of trial in early 2009, Christopher was 46 years old and Patricia was 43. The primary asset was the family home valued at $1,650,000 with no encumbrances. Retirement accounts totaled over $285,000. They owned several vehicles and other assets of lesser value.

Patricia proposed a 60/40 property division and Christopher proposed a 50/50 split. The parties each testified that, should the court adopt the property division urged, the amount of maintenance should be set at up to half of Christopher's monthly income. Christopher proposed a month by month calculation. Patricia sought 10 years of maintenance and Christopher proposed 4.5 years. Patricia's career counselor testified that due to her limited work experience and training, Patricia could currently earn only $10 to $12 an hour in part time, temporary service work. Patricia was attending community college. The counselor concluded that when Patricia completes a bachelor's degree in business in four to five years, followed by two to three years of contract and part time work that she would be able to look for a full time job, and ultimately may be able to earn in the range of $60,000 per year.

The trial court divided the bulk of the assets 60 percent to Patricia and 40 percent to Christopher. Many of the debts were also divided on the same basis. The court awarded maintenance of $5,500 per month for eight years, and directed that child support be computed based on Christopher's W-2's with income imputed to Patricia.

The February 2009 child support order required Christopher to pay $2,234.15 a month through August 2009 and $2,353.44 beginning in September 2009, but did not impute any income to Patricia for being voluntarily unemployed. The court awarded Patricia $21,500 representing one half of her attorney fees, concluding that Patricia had the need and Christopher had the ability to pay the fees. The court also recited that Christopher had been intransigent, but made no findings supporting that determination.

ANALYSIS

Child Support Calculation. Christopher offers four arguments in his challenge to the calculation of child support. First, although the trial court included the $5,500 monthly maintenance in the computation of Patricia's income, the trial court failed to impute any income to her based on her voluntary unemployment while she attended community college.

RCW 26.19.071(6) directs the trial court to determine whether a parent is voluntarily unemployed or underemployed based upon that parent's "work history, education, health, and age, or any other relevant factors." Income is imputed at the level "at which the parent is capable and qualified." In re Marriage of Sacco, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990). Absent information to the contrary, the trial court shall impute income "based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports." RCW 26.19.071(6).

Although the trial court indicated in its oral ruling that income would be imputed

to Patricia, and it is undisputed that at the time of trial she was voluntarily unemployed, the trial court did not impute any income to her for lack of employment and made no findings regarding the level of income for which Patricia was capable and qualified. This matter must be remanded for the entry of findings regarding imputed income. If the trial court did not intend to impute any income for voluntary unemployment, then the trial court must explain in written findings why it did not do so. If the trial court does impute income on remand, then the court must enter written findings supporting the amount of imputed income and recalculate child support based upon the new income levels. The trial court findings may address the level of income Patricia is capable of actually earning in the job market.

Second, Christopher argues that the base amount of child support plus the extraordinary expenses awarded exceeds 45 percent of his net monthly earnings, but the trial court failed to make any finding of good cause. RCW 26.19.065(1) requires that neither parent's child support obligation shall exceed 45 percent of net income "except for good cause shown." Here, the parents' combined monthly income exceeded $9,000 and would likely be slightly greater if additional income is imputed to Patricia on remand. It seems clear that upon documentation of actual costs related to the youngest daughter's standard of living, good cause may be shown for exceeding the 45 percent standard. On remand, if the child support obligation exceeds 45 percent of Christopher's net income, then the trial court should enter specific findings specifying good cause for that level of child support, consistent with the provisions of RCW

26.19.065.

Third, Christopher challenges the trial court's inclusion of $1,500 for private school tuition and $2,300 for horseback riding expenses as extraordinary expenses included in the child support calculation. The tables for child support in effect at the time of trial top out at a $7,000 combined monthly net income. When the combined monthly net incomes of the parents exceed $7,000, "the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact." RCW 26.19.020. When exercising its discretion to exceed the $7,000 maximum, the trial court should consider but is not limited to (1) the parent's standard of living and (2) the child's special medical, educational, or financial needs. McCausland v. McCausland, 159 Wn.2d 607, 621, 152 P.3d 1013 (2007). "[T]he amount of child support must be based on the correlation to the child's or children's needs." McCausland, 159 Wn.2d at 620 n.6. And the amount must be "commensurate with the parents' income, resources, and standard of living." McCausland, 159 Wn.2d at 621. A broad range of educational, extracurricular, and cultural activities qualify as valid grounds for ordering additional support. In re Marriage of Krieger, 147 Wn. App. 952, 961, 199 P.3d 450 (2008) ("[O]rthodontia, summer camp, college test preparation classes, computers, and travel for extracurricular activities or cultural experiences are within the appropriate bases for additional support.").

There is ample evidence in the record regarding the standard of living the

parents enjoyed, the daughter's past private education, her history of competitive horseback riding, Christopher's recent $30,000 purchase of a horse for his daughter, and the daughter's success in regional competition, as well as Patricia's view that horseback riding is extremely important to the daughter. But the trial court's written findings do not expressly address the correlation of private education and horseback riding to the daughter's needs. The court's oral decision alludes to the importance of private school and horseback riding to the daughter, but the child support order merely notes that child support exceeds the advisory amount because "the child support transfer payment includes the child's private school tuition and the cost of the child's competitive [horseback] riding program." Neither are there any written findings that those expenses are "commensurate with the parent's income, resources and standard of living." The trial court seems to acknowledge in its oral decision that the parents can no longer afford both the private education and the horseback riding program. It is not clear whether the trial court found that substantial proceeds from the pending sale of the residence were the basis for including both the private education and the horseback riding program as part of the child support calculation. On remand, if the child support continues to include the private education and horseback riding expenses, the trial court must enter more precise written findings of fact specifying the extent of the daughter's needs for private education and the horseback riding program, as well as specific written findings as to how those expenses are commensurate with the parents' income, wealth, and standard of living.

Finally, Christopher contends there is insufficient evidence to support the trial court's use of $11,550 as his level of gross monthly income, when his W-2 forms for 2008 revealed gross monthly income of $11,453.83. It is not clear how the court arrived at the $11,550 income level for current gross monthly income. Christopher identified $16,000 per month as income in 2007 in his interrogatory answers. His January 20, 2009 financial declaration lists "imputed income" of $11,169.04 with no indication of any interest, investment or other business income. On remand the court should enter specific findings clarifying the basis for the exact level of Christopher's income used for the child support calculations.

Maintenance Award. Christopher argues that the trial court abused its broad discretion in awarding Patricia $5,500 per month in maintenance for eight years.[2] The only dispute before the trial court was the duration of a maintenance award at one half of Christopher's monthly income. The court entered a detailed written finding regarding maintenance:

> Maintenance should be ordered because: the parties have a long-term (21 year) traditional marriage. The wife dropped out of college when she was 20 years old in order to marry the husband. During the marriage, the wife's primary responsibilities were maintaining the parties' home and caring for the parties' three children. The husband was employed earning in excess of six figures and working in excess of 40 hours per week for the last ten years of the marriage, including some years during which the husband earned over $500,000. The wife has a high school education and has returned to college in hopes of completing a business degree. The wife has taken substantial steps toward obtaining education that will render her employable in the future, however, at present, and for the foreseeable future, the wife lacks the skills to earn more than a minimum wage while the husband retains the ability to earn a substantial six figure

[2] An award of maintenance is reviewed for abuse of discretion. In re Marriage of Mueller, 140 Wn. App. 498, 510, 167 P.3d 568 (2007).

> income. The wife sacrificed her career opportunities in order to stay home to raise the parties' three children, two of whom are now in college themselves, and the youngest for whom the wife still has primary responsibility, while the husband has been gainfully employed throughout the marriage and now leaves the marriage with the ability to support himself in a very comfortable and luxurious lifestyle. Given her age and the need for both further education and work experience, the wife will not likely ever be able to earn a six figure income, and certainly is not likely to do so within the next eight (8) years, whereas it is likely that with his 25 years of experience, the husband will not only continue to earn a six figure income, but will likely increase his earnings substantially over the next eight (8) years.

Maintenance "shall be in such amounts and for such periods of time as the court deems just." RCW 26.09.090(1). The court must consider certain statutory factors, including the duration of the marriage, the health and age of the party seeking maintenance, the standard of living established during the marriage, the financial resources of the party seeking maintenance, the time necessary for the party seeking maintenance to acquire sufficient education or training to find employment, and the ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance. RCW 26.09.090(1). The trial court is not required to enter formal findings on all of the factors. Mansour v. Mansour, 126 Wn. App. 1, 16, 106 P.3d 768 (2004) ("Nothing in RCW 26.09.090 requires the trial court to make specific factual findings on each of the factors listed in RCW 26.09.090(1)."). When, as in the present case, the disparity in earning power is great, reviewing courts must closely examine a maintenance award "to see whether it is equitable in light of the postdissolution economic situations of the parties." In re Marriage of Sheffer, 60 Wn. App. 51, 56, 802 P.2d 817 (1990).

Christopher argues that the trial court focused entirely upon the earning capacity of the parties ignoring the other factors including the award of 60 percent of the assets and $21,500 in attorney fees to Patricia. But the finding entered by the trial court addressed almost all of the statutory factors including length of the marriage, Patricia's age, the time required to obtain additional education and work experience, the standard of living during the marriage, and Christopher's financial situation.

Christopher also argues that the evidence does not support the finding that "at present, and for the foreseeable future, the wife lacks the skills to earn more than a minimum wage." But the testimony of her career counselor does reflect her current earning capacity limited to $10 to $12 per hour on a part time basis for temporary work. In addition to the four to five years projected to obtain a bachelor's degree in business, the counselor noted the need to obtain practical work experience and that she "may have to take contract work, part-time work, in order to get two to three years of experience so employers will hire her." The counselor concluded that 43-year-old Patricia would be almost 50 when she would be out looking for a full-time job. To the extent that Christopher reads the finding to refer to the federal or state statutory minimum wage of $7.25 or $8.55 per hour, the context does not suggest such confusion by the trial court. The counselor's testimony provides ample support for the finding that Patricia lacks the skill and education to obtain more than a minimal level of income for the foreseeable future.

The trial court also found that Christopher "retains the ability to earn a

substantial six figure income," that he has "the ability to support himself in a very comfortable and luxurious lifestyle," and that he "will not only continue to earn a six figure income, but will likely increase his earnings substantially over the next eight (8) years." Christopher argues there is no evidence supporting the "wishful thinking" that he has or will have significant income supporting a lavish life style in the next eight years. The court acknowledged in its oral ruling that Christopher's income for the past two years had dropped. The court also noted that car sales and other occupations and professions had suffered in the current economy. But the court recognized that "[a]lthough the husband's salary is currently suffering with the economy, it is clear he has tremendous earning potential going forward. It is not possible in any way to equalize the parties without utilizing maintenance." The record of Christopher's tremendous past success in selling cars, is adequate to support the trial court's forecast that his income will increase over the next eight years.

A review of the record demonstrates that the maintenance award was based on a fair application of the statutory factors to evidence presented at trial and was a proper exercise of the trial court's discretion. The decree should be amended to correct the scrivener's error, so that the decree accurately reflects that the eight years of maintenance will end in February 2017.

Division of Property and Debts. Christopher argues that the trial court failed to consider his economic circumstances at the time of the division of the property and liabilities. In a dissolution of marriage, the trial court has broad discretion to make a

just and equitable division of the property and liabilities of the parties after considering the nature and extent of community and separate property and liabilities, the duration of the marriage, and the economic circumstances of each spouse. RCW 26.09.080. The decision of the trial court will not be disturbed on appeal absent a manifest abuse of discretion. In re Marriage of Harrington, 85 Wn. App. 613, 624, 935 P.2d 1357 (1997).

Christopher contends the trial court ignored the limited funds he had available after the child support and maintenance awards. Substantially all of the property was divided 60 percent to Patricia and 40 percent to Christopher. But in this long term marriage Patricia faced very difficult economic circumstances. Even in view of the child support award and the award of maintenance, Christopher fails to establish it was a manifest abuse of discretion to favor Patricia in the division of property and liabilities.

Christopher argues that the trial court erred in requiring him to repay $19,982 to Patricia for horse related expenses he contends had already been paid out of temporary maintenance he paid and $10,000 from a certificate of deposit they had jointly liquidated. Christopher argues that the effect of the trial court order is to pay Patricia twice for horse related expenses. But the record cited by Christopher does not reflect that the award by the trial court has the effect of twice compensating Patricia for horse related expenses. The trial court ordered Christopher to pay $3,500 representing monies paid by Patricia for horse shows that Christopher agreed to repay her, $13,800 paid by Patricia for care of the horse, and $2,682 for the saddle paid for by Patricia's mother. Christopher does not establish that these same amounts were

previously reimbursed by means of the temporary maintenance payments or the $10,000 from the certificate of deposit for horse related expenses. Patricia testified that the maintenance was inadequate to pay all of the horse expenses. Christopher acknowledged he would pay the amount owing for the saddle. Christopher does not establish a double payment.

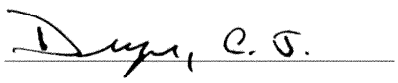
The court properly considered all of the statutory factors. The division of property and liabilities is fair and equitable.

Attorney Fees in the Trial Court. The trial court awarded Patricia $21,500 in attorney fees representing one half of the fees she incurred. The court based the award on need and ability to pay and intransigence, but did not offer any findings explaining the need or ability to pay, or the basis for its conclusion that Christopher had been intransigent. The trial court did not set out the specific basis for computing the amount awarded as a reasonable fee. Where a trial court fails to provide sufficient findings of fact and conclusions of law to develop an adequate record for appellate review of the fee award, we will vacate the judgment and remand for a new hearing and the entry of findings of fact and conclusions of law regarding the fee award. In re Marriage of Bobbitt, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). The awards of attorney fees in the trial court must be vacated and this matter remanded for the entry of findings of fact and conclusions of law regarding the fee awards. We note that merely because Patricia received a substantial award of property does not preclude an award based on relative need and ability to pay. In re Marriage of Morrow, 53 Wn. App. 579, 590-91,

770 P.2d 197 (1989) ("A spouse's receipt of substantial property or maintenance does not preclude the spouse from also receiving an award of attorney fees and costs when the other spouse remains in a much better position to pay." Even though the wife in Morrow received an award valued at about $175,000, plus lifetime maintenance of $2,200 per month, the reviewing court upheld the order that the husband pay half of her $20,100 legal bill.).

Attorney Fees on Appeal. Patricia requests attorney fees on appeal based on her need and Christopher's ability to pay under RCW 26.09.140. She acknowledges that when deciding fees on appeal under this statute "the court should examine the arguable merit of the issues on appeal and the financial resources of the respective parties." In re Marriage of Booth, 114 Wn.2d 772, 779, 791 P.2d 519 (1990). Christopher has prevailed in obtaining a remand for the entry of additional findings regarding aspects of the support award (and potential recalculation of child support) as well as for additional findings regarding the award of attorney fees in the trial court. Patricia has prevailed in defending the maintenance award and division of property and liabilities. In this setting, we decline to award Patricia any fees on appeal.

Affirmed in part and reversed and remanded for further proceedings.



We concur:

Leach, A.C.J. Meyer, J.P.T.